

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI**  
**BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 88 OF 2015**

DIST. : AURANGABAD / BEED

- (1) Sominath s/o Bhanudas Wagh,  
Age 40 years, Occ. Service  
(as Forest Labourer),  
R/o At post Chowka,  
Taluka & Dist. Aurangabad.
- (2) Shaikh Akbar Shaikh Rasul,  
Age 45 years, Occ. Service  
(as Forest Labourer),  
R/o In front of Police Petrol Pump,  
Balepir, Dist. Beed.

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**APPLICANTS**

**VERSUS**

- (1) The State of Maharashtra,  
(copy to be served on C.P.O.,  
M.A.T., Bench at Aurangabad)
- (2) The Additional Principal Chief  
Conservator of Forests,  
M.S., Nagpur.
- (3) The Chief Conservator of Forest  
(Regional), Aurangabad.

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**RESPONDENTS**

APPEARANCE : Miss. Preeti Wankhade, learned Advocate  
for the applicants.

: Shri I.S. Thorat, learned Presenting Officer  
for respondents.

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**CORAM : HON'BLE SHRI RAJIV AGARWAL,**  
**VICE CHAIRMAN**  
**AND**  
**HON'BLE SHRI B.P. PATIL, MEMBER (J)**

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**ORDER**

*(Passed on August, 2017)*

**[PER :- Shri B.P. Patil, Member (J)]**

1. By filing the original application the applicants prayed to quash and set aside the impugned communication dated 1.10.2015 issued by the res. no. 3, whereby the applicants were held ineligible by the res. no. 2 for the post of Forest Guard and also prayed to direct the res. nos. 2 & 3 to finalize the remaining process of selection as per the advertisement dated 2.7.2013 and corrigendum dated 5.7.2013 to the extent of four posts earmarked for permanent Forest Labourers from Open category.

2. The applicants were from Open category and they possess qualification of 12 th Science. They were appointed under the State Government in the Forest Department as daily wages Forest Labourers in the year 1995 and 1990 respectively. By issuing G.R. dated 16.10.2012, the Government took a policy decision to absorb all the daily wages labourers in the Forests Department who had continuously worked for a period of 5 years from 1.11.1994 to 30.6.2004, on the supernumerary posts. In condition no. 8 (D) of the said G.R. it has been mentioned that 10% of the posts are reserved in the direct recruitment for Forest

Labourers. On 2.7.2013 the res. no. 3 issued advertisement for filling in various vacant posts of Forest Guard in the Forest Department. Later on by the corrigendum dated 5.7.2013 it was mentioned that a common selection process would be conducted for filling in the posts of the year 2014. Four posts were reserved for the permanent Forest Labourers in the Open category. As per the advertisement, the applicants had submitted their applications to the res. no. 2 for being considered for the post of Forest Guard from the said horizontal reservation category of permanent Forest Labourers. The res. no. 3 conducted the physical test of all the candidates in which the applicants had participated and completed the physical test during the prescribed time limit and hence were eligible to be called for oral interview. After completion of physical test and interview, the res. no. 3 published the mark list of all the candidates on 20.9.2013 except for the category of permanent Forest Labourers from Open category. On 20.9.2013, the respondents published 2 separate selection lists of Forest Guards for the years 2013 & 2014, but the names of permanent Forest Labourers were not published. The applicants have not heard anything from the res. no. 3 during one and half year. The res. no. 3 had not intimated anything to the applicants, nor he called

the applicants for oral interview. The res. no. 3 had not completed the recruitment process to fill up the posts horizontally reserved for permanent Forest Labourers. Therefore, the applicants made several representations to the res. no. 3 requesting him to consider them for appointment on the post of Forest Guards, but their representations were not decided. Therefore, they filed the present original application and prayed to direct the respondents to complete the process of recruitment, which is kept incomplete.

3. During the pendency of the original application, the res. no. 3 has produced the communication dated 1.10.2015 stating that the res. no. 2 held them ineligible for the post of Forest Guards by interpreting the G.R. dated 16.10.2012. It is their contention that the res. no. 2 has wrongly interpreted the provision of para 8 (D) of the G.R. dated 16.10.2012 and hence the applicants are wrongly considered as ineligible for the said post of Forest Guards. It is their contention that earlier recruitments were conducted on the basis of the provisions made in the said G.R. and appointments were given only to the permanent Forest Labourers and not to the daily wage Forest Labourers, but the res. no. 2 without considering the said aspect has held that

though the posts were reserved for daily wagers and the permanent labourers are not eligible for appointment on the said post of Forest Guard. Therefore, the applicants prayed to quash and set aside the communication dated 1.10.2015 and to direct the respondents to complete the recruitment process and to consider their candidature.

4. The res. no. 3 filed his affidavit in reply and resisted the contentions of the applicants. It is his contention that the original application is not filed within limitation and therefore it is not maintainable. It is his contention that in view of the G.R. dated 16.10.2012, 10 % posts are reserved only for the daily wage labourers (रोजंदारी मजूर). It is his contention that in view of advertisement dated 2.7.2013, 10% posts were reserved for daily wage forest labourers in view of G.R. dated 16.10.2012, but the applicants had applied for the said post by claiming that they are permanent Forest Labourers and they are entitled to get the benefit of the said G.R. It is his further contention that the res. no. 3 sought guidance of res. no. 2 regarding confusion between the permanent and daily wage Forest Labourers for filling in the post of Forest Guards vide communications dated 30.8.2013 & 22.8.2014. The Additional Principal Chief Conservator of Forests

(Administration IInd cadre), M.S., Nagpur had opined that the daily wages labourers can apply for the post of Forest Guard and not permanent Forest Labourers, by the letter dated 31.8.2013. Therefore, the applicants are not entitled for selection on the vacant post of Forest Guards as per the advertisement dated 2.7.2013 and 5.7.2013. He has further submitted that the candidature of the applicants has been rightly rejected as they are not eligible for the post of Forest Guards. There is no illegality in the impugned communication and therefore, he prayed to reject the original application.

5. We have heard Miss. Preeti Wankhade, learned Advocate for the applicants and Shri I.S. Thorat, learned Presenting Officer for respondents.

6. Admittedly, the applicants were appointed as a daily wage Forest Labourers in the Forest Department under the State Government in the year 1995 & 1990 respectively. There is no dispute that on 16.10.2012 the Government of Maharashtra has taken a policy decision to absorb all daily wages Labourers, who had worked continuously for the period of 5 years during 1.11.1994 and 30.6.2004 on the supernumerary posts. Accordingly the applicants were appointed as a permanent Forest

Labourers by the orders dated 12.11.2012 & 31.10.2012 respectively (Annex. 2 (ii) & (ii) paper book page 17 & 18) of the O.A.). There is no dispute that the res. no. 3 has issued an advertisement for filling up the vacant posts of Forest Guards on 2.7.2013 and thereafter issued corrigendum on 5.7.2013 and thereby called the applications of the eligible candidates. Admittedly, in view of the provisions of the G.R. dated 16.10.2012, 10% posts were reserved in the direct recruitment for the permanent Forest Labourers from the Open category. Four posts of permanent Forest Guards of open category were earmarked under the horizontal reservation in the advertisement published by the res. no. 3. It is not disputed that the applicants submitted their applications accordingly for Forest Guards from the category of permanent Forest Labourers. They participated in the recruitment process and also appeared for the physical test conducted by the res. no. 3, but they have not been called for the oral interview. The applicants have completed the physical test during the prescribed time limit and hence were eligible to be called for oral interview. After completion of physical test and interview of other candidates, on 20.9.2013 the respondents published 2 separate selection lists of Forest Guards for the years 2013 & 2014, but the names of permanent Forest

Labourers from the above mentioned category were not mentioned therein. Admittedly, the applicants made several representations to the respondents in that regard, but the same have not been decided by the respondent authorities and therefore they approached this Tribunal by filing the present O.A.

7. It is not much disputed that during the pendency of the original application the res. no. 3 had informed the Chief Presenting Officer by the communication dated 1.10.2015 that the res. no. 2 held the applicants ineligible for the post of Forest Guard.

8. The learned Advocate for the applicants has submitted that, in view of the G.R. dated 16.10.2012 and more particularly in view of para 9 (D) thereof, the Government has resolved to keep 10% posts reserved in the direct recruitment for the daily wage Forest Labourers. She has submitted that in view of the said G.R., all the daily wages Forest Labourers, who have completed 5 years' continuous service from 1.11.1994 to 30.6.2004 have been absorbed and therefore no daily wage Forest Labourer was left for absorption. Hence, on reading the said G.R., it reveals that the said posts were reserved for the daily wage Forest Labourers, who are regularized in service as a



permanent Forest Labourers and therefore the res. no. 3 has rightly mentioned the said fact in the advertisement dated 2.7.2013 and corrigendum to it dated 5.7.2013. She submits that in view of the said provisions, the applicants were allowed to participate in the selection process and they succeeded in the physical test, but they were not called for the oral interview. She has submitted that except the recruitment process so far as 10% reservation provided for permanent Forest Labourers, rest of the recruitment process has been completed and none from the said category has been selected. She has submitted that for the first time in the year 2015, the respondents informed that the applicants are not eligible for appointment on the post of Forest Guards as they are not daily wage Forest Labourers and the posts are reserved for daily wages labourers only. She has submitted that the res. no. 2 has wrongly interpreted the G.R. dated 16.10.2012 and informed the res. no. 3 that only daily wages Forest Labourers are eligible to be appointed under the said reservation and the said provision is not available to the permanent Forest Labourers. She has submitted that once the advertisement has been issued reserving 10% posts for permanent Forest Labourers, the said criteria cannot be changed & selection process should continue on such criteria.

9. In support of her submission, she has placed reliance on the judgment in **Madan Mohan Sharma and Anr. Vs. State of Rajasthan and Ors. [AIR 2008 SC 1657]**, wherein the Hon'ble Supreme Court has observed as under :-

*“6. We have heard learned counsel for the parties and perused the records. Mr. M.R. Calla, learned senior counsel appearing for the appellants has strenuously urged that during the pendency of the selection process, the eligibility criteria was changed and the date for submission of the application in pursuance to the advertisement was extended and Rule 266 of the Rules of 1996 came into being on 30.12.1996 whereby it was provided that Higher Secondary Examination shall be the criteria for preparing the merit list. As such, as per the service rules, the selection should have been made on the basis of Higher Secondary Examination marks and not on the basis of Secondary Examination marks. We regret this cannot be accepted. Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which was laid down and it cannot be on the basis of the criteria which has been made subsequently. As per the circular which was obtaining at the time when the advertisement was issued was dt. 4.7.1995, the criteria for selection to the post of Teacher Grade III was Secondary Examination*

*though this was changed during the pendency of the advertisement. Subsequent amendment of the Rules which was prospective cannot be made retrospective so as to make the selection on the basis of the Rules which were subsequently amended. If this was to be done, then the only course open was to recall the advertisement No.1/1996 and to issue fresh advertisement according to the Rules which had come into force. Secondly, this was not done and erroneously the authorities made the amended Rules applicable and proceeded with the selection which resulted into litigation and ultimately Radhey Shyam Sharma succeeded in that litigation and it was held that the selection should be made as per Secondary Examination marks, the criteria which was prevalent at the time when the advertisement was issued. Thereafter looking to the hardship the Government invoked the power of relaxation under Rule 296 of the Rules of 1996 and order of appointment was issued in favour of both the appellants. This again resulted into litigation and ultimately, in that litigation, Rule 296 of the Rules of 1996 was struck down being ultra vires and consequently, the appointment of both the appellants were set aside. The Division Bench of the High Court looking to the hardship of the candidates issued the direction as aforesaid.”*

10. She has submitted that the res. nos. 2 & 3 have wrongly interpreted the provisions of G.R. dated 16.10.2012 and, thereby,

they held that the applicants are not eligible for appointment as Forest Guards. She has submitted that, in view condition no. 8 (D) of the said G.R., it has been mentioned that 10% of the posts are reserved in the direct recruitment for permanent Forest Labourers. She has argued that on reading the entire G.R., it appears that the said G.R. is applicable to the present applicants. She has further submitted that, no word shall be added or deleted from the statutory provisions.

11. In support of her submission, she has placed reliance on the judgment in **Dr. Rajbir Singh Dalal Vs. Chaudhari Devilal University, Sirsa and Another [AIR 2008 SCW 5817]**, wherein the Hon'ble Supreme Court has observed as under :-

*“24. No doubt, the ordinary principle of interpretation is that words should neither be added nor deleted from a statutory provision. However, there are some exceptions to the rule where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a strict construction which leads to absurdity or deprives certain existing words of all meaning, and in this situation it is permissible to Supply the words (vide Principles of Statutory Interpretation by Justice G.P. Singh, 9 th edn. Pp 71-76).”*

It has been further observed by Hon'ble Supreme Court as under :-

*“32. In Mimansa, casus omissus is known as adhyahara. The adhyahara principle permits us to add words to a legal test. However, the superiority of the Mimansa Principles over Maxwell's Principles in this respect is shown by the fact that Maxwell does not go into further detail and does not mention the sub-categories coming under the general category of casus omissus. In the Mimansa system, on the other hand, the general category of adhyahara has under it several sub-categories, e.g., anusanga, anukarsha, vakyashesha, etc. Since in this case we are concerned with the anusanga principle, we may explain it in some detail. ”*

12. The learned P.O. has submitted that the wording in para 8 (D) of the G.R. dated 16.10.2012 is self explanatory and therefore no question of misreading of the said provision arises. He has submitted that in para 8 of the said G.R. it is mentioned that 10% reservation is available to the daily wages workers and it is not applicable to the permanent Labourers and therefore he supported the impugned order passed by the respondents.

13. We have gone through the documents available on record. Admittedly, in view of the advertisement dated 2.7.2013 &

5.7.2013 as per horizontal reservation 4 posts were reserved for permanent Forest Labourers and this fact is evident from the copy of advertisement at paper-book pages 19 to 32. The applicants participated in the recruitment process by submitting applications. They appeared for the physical test conducted by the res. no. 3, but they were not called for interview. The posts reserved under the said category have not been filled in by the res. no. 3. The applicants made several representations to the resp. nos. 2 & 3, but till 2015 neither the res. no. 2 nor the res. no. 3 informed anything about the same to the applicants. In the meantime the res. no. 3 sent letters dated 30.8.2013 & 22.8.2014 to the res. no. 2 and sought guidance from him. The res. no. 2 by his communication dated 26.5.2015 informed the res. no. 3 that the said reservation was available to the daily wages Forest Labourers only. The res. no. 3 informed the said fact to the learned Chief Presenting Officer of this Tribunal by communication dated 1.8.2015.

14. In this matter the provisions of G.R. dated 16.10.2012 are material and crucial to decide the real dispute involved therein. Para 8 of the G.R. dated 16.10.2012 is material, which reads as under :-

“८. ज्यांची वन विभागातील सलग पध्दतीने अथवा तुटक - तुटकरित्या सेवा पांच वर्षांपेक्षा जास्त झालेली आहे, ज्यांचा वन विभागातील गट क व गट ड मधील रिक्त पदे भरतांना नेमणुकीसाठी खालीलप्रमाणे विचार करण्यात यावा.

अ. सेवायोजन कार्यालयामार्फत ज्या पदांवर भरती करण्यांत येते त्याच पदावर भरती करण्यांत यावी. ज्या पदांवर भरती करण्यांस सेवायोजन कार्यालयाची अट शिथिल करण्यांत येत आहे.

ब. वेळोवेळी शासन निर्देशानुसार परवानगी देण्यांत आलेल्या निवड मंडळामार्फत ज्या पदावर भरती करण्यांत येते त्याच पदावर भरती करण्यांत यावी. शासनाचे भरती नियमातील संबंधित पदांकरीता असणा-या आवश्यक अर्हता व अटी शर्ती लागू राहतील.

क. गट क किंवा गट ड साठी नेमणूक करतांना फक्त वयोमर्यादा संबंधीची अट खालीलप्रमाणे शिथिल करण्यांत यावी.

१. वयाच्या ३३ वर्षानंतर (संबंधित) मजूर जेवढी वर्षे वन विभागात कार्यरत आहेत तेवढ्या वर्षांनी वयाची अट शिथिल करण्यांत यावी. उदाहरणार्थ ज्यांनी ५ वर्षे सेवा केलेली असेल त्यांना वयाच्या ३८ वर्षे पर्यंत व ज्यांनी १२ वर्षे सेवा केली असेल त्यांना वयाच्या ४५ वर्षांपर्यंत वयाची अट शिथिल करण्यांत यावी.

ड. शासनाने अंशकालीन कर्मचा-यांबाबत निर्गमित केलेल्या शासन निर्णयानुसार त्यांच्याकरिता शासनात सरळ सेवा भरतीमध्ये समांतर आरक्षण ठेवून त्यांच्याकरिता पदे आरक्षित केली आहेत. त्याप्रमाणे वन विभागात सरळसेवी भरतीवेळी पात्रता पूर्ण करित असणा-या रोजंदारी मजूराना गट क व गट ड मध्ये १० % आरक्षित ठेवण्यात यावीत. अंशकालीन कर्मचा-यांना वयाच्या संदर्भात देण्यात आलेली सूट (४६ वर्ष) यांनाही देण्यांत यावी.”

15. On going through the above provisions, it reveals that, the Government took a policy decision to absorb all the daily wage Forest Labourers in the Forests Department who had continuously worked for a period of 5 years from 1.11.1994 to 30.6.2004. Provision has been made in para No. 8 of the G.R. to consider them while filling up the posts in Group C & D cadre. Accordingly provisions are made therein and 10 % posts from those daily wages Forest Labourers have been kept reserved for Group C & D posts in view of para 8 of the said G.R. On reading the said G.R., it appears that, said provisions are made applicable to the daily wages Forest Labourers, who were made permanent by the said G.R. In order to give them opportunity to join the services, 10% posts have been kept reserved for them. Therefore, in our considered view, the interpretation made by the res. no. 2 that the said provision is applicable to the daily wage Forest Labourers is totally wrong. Therefore, in our view, the communication dated 1.8.2015 issued by the res. no. 3 to the learned C.P.O. of the Tribunal, by which it has been informed that the applicants are not eligible as they were not daily wages Forest Labourers is not proper and correct. It is material to note here that the provisions of G.R. dated 16.10.2012 are unambiguous and clear and the interpretation of res. no. 2 is not



proper one. Therefore, the impugned communication dated 1.10.2015 issued by the res. no. 3 is not proper, correct and legal. Therefore it requires to be quashed and set aside by allowing the O.A. Hence, we pass the following order :-

**ORDER**

- (i) The O.A. is allowed and the impugned communication dated 1.10.2015 issued by the res. no. 3 is hereby quashed & set aside and the applicants are hereby declared as eligible for the post of Forest Guards under horizontal reservation from the category of permanent Forest Labourers in Open category for the recruitment held in the year 2013.
- (ii) The respondents are directed to consider the candidature of the applicants under the said category if they are eligible otherwise and to complete the remaining recruitment process to fill up the posts advertised by the advertisement dated 2.7.2013 & corrigendum to it dated 5.7.2013.
- (iii) The respondents are further directed to consider the claim of the applicants for oral test, if they comply the other requirements and take further decision in the matter.

- (iv) The said process shall be completed within a period of 2 months from the date of this order and the result of the recruitment process should be communicated to the applicants in writing.

There shall be no order as to costs.

**MEMBER (J)**

**VICE CHAIRMAN**

**ARJ-OA NO.88-2015 HON. B.P. PATIL (SELECTION)**